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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

JESSE J. RENTERIA et al.,

Defendants and Appellants.

B199731

(Los Angeles County  
Super. Ct. No. PA052870)

APPEALS from judgments of the Superior Court of Los Angeles County. Ronald S. Coen, Judge. Affirmed with corrections.

Robert Bryzman, under appointment by the Court of Appeal, for Defendant and Appellant Jesse J. Renteria.

Patricia J. Ulibarri, under appointment by the Court of Appeal, for Defendant and Appellant Emanuel Romero.

Leonard J. Klaif, under appointment by the Court of Appeal, for Defendant and Appellant Antonio Ruiz.

Daniel J. Bramzon for Defendant and Appellant Jesse Aguilar.

John F. Schuck, under appointment by the Court of Appeal, for Defendant and Appellant Christian Gallegos.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General,

James William Bilderback II and J. Michael Lehmann, Deputy Attorneys General, for Plaintiff and Respondent.

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### ***SUMMARY***

This appeal involves an attack on a prison inmate in his jail dormitory. Before his incarceration, that inmate had identified a fellow gang member to police as the shooter in an attempted murder investigation. Two cameras recorded the activities in the jail dormitory at the time of the attack. As a result, six defendants were identified and charged with conspiracy to commit aggravated mayhem, aggravated mayhem, dissuading a witness by force or threat and dissuading a witness in furtherance of a conspiracy, along with gang, personal infliction of great bodily injury and prior conviction allegations. One of the defendants made a deal with the prosecution and testified at the other five defendants' trial. All five defendants appeal, challenging their convictions on numerous grounds. Except to the extent two defendants' abstracts of judgment should be corrected, we affirm.

### ***FACTUAL AND PROCEDURAL SYNOPSIS***

In July 2004, Los Angeles Sheriff's Department Detective Frank Bravo was investigating an attempted murder. He interviewed Raymond Perez, a Florencia 13 gang member, and told Perez he had been identified as the shooter. Perez told Bravo he was wrong; Carlos Nava, known as "Youngster," was the shooter. Driving an undercover vehicle and accompanied by Perez who provided directions, Bravo arrived at Nava's house. Perez then identified Nava (standing in front of the house) for Bravo. Perez told Bravo if he (Perez) could call Nava, he would have Nava admit to the shooting. With Bravo listening in, Perez called Nava and talked about the shooting. Nava said, "I'm going to do you a favor. I'm going to make this right." In the course of his investigation,

Bravo determined Perez had been the “shot-caller,” instructing Nava to shoot the victim. Both Nava and Perez were charged with attempted murder.<sup>1</sup>

On July 18, 2005, at the preliminary hearing in that case, Bravo recounted the assistance Perez had given him and testified to the statements Perez and Nava had made. Bravo observed some male Hispanics he believed to be gang members in the audience; they had shaved heads, tattoos and baggie clothing, and he could see a Florencia 13 tattoo on the back of one man’s head.<sup>2</sup> Given the substance of his testimony and the audience hearing it, Bravo was concerned for Perez’s safety. Perez had no injuries or scars on his head, ears, neck or face at the time of the preliminary hearing.

Three weeks later, on August 7, 2005, at about 9:00 p.m., Perez approached the custody assistant (Alexander Spieler) at the security gate of Dorm 325 at the Pitchess Detention Center, with injuries to his face, head, ears and neck.<sup>3</sup> Perez was holding a towel to his left cheek where the “severest of his injur[ies] had occurred.” He claimed he had “cut himself shaving.” Spieler notified deputies, and all inmates were ordered to their bunks so deputies could investigate and gather evidence. One of the deputies (Eric Caplinger) found a laundry bag in the bathroom containing blood-stained jail uniform clothing (T-shirt, “County blues,” and boxers), several bloody towels and playing cards with blood on them. There was no blood anywhere else in the bathroom.

Five days later, on August 12, Detective Dennis Salazar interviewed inmates Jesse Aguilar, Antonio Ruiz, Emanuel Romero, Jesse Renteria, Christian Gallegos and Manuel Hernandez and had photographs taken of them. There were four surveillance cameras in Dorm 325, and two of these cameras recorded views of the dorm extending to the back

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<sup>1</sup> As a “snitch,” Perez was offered the opportunity to be segregated from the general population in the Los Angeles County jail system at the time of his arrest, but he declined.

<sup>2</sup> Bravo had worked at the Century Station for 17 years. He was in contact with the Florencia 13 gang on a daily basis and could identify their tattoos and graffiti.

<sup>3</sup> A custody assistant supervises the inmates’ daily activities.

wall (one on the east side of the dorm, one on the west side) and recorded evidence of the attack on Perez. Detective Salazar viewed this footage 30 to 50 times.<sup>4</sup> Working with gang operations jail deputies assigned to Perez's dorm, Detective Salazar reviewed the video from the cameras operating in the dorm at the time of the attack on Perez, and photos of the dorm's inmates taken within days of the attack along with booking photos of the dorm occupants and identified Renteria, Aguilar, Ruiz, Romero, Gallegos and Hernandez.<sup>5</sup>

Renteria, Aguilar, Ruiz, Romero and Gallegos were charged with (1) conspiracy to commit aggravated mayhem (Pen. Code, §§ 182, subd. (a), 205 [all statutory references are to the Penal Code unless otherwise indicated]) (count 1); (2) aggravated mayhem (§ 205) (count 3); dissuading a witness by force or threat (§ 136.1, subd. (c)(1)) (count 4); and (4) dissuading a witness in furtherance of a conspiracy (§§ 136.1, subd. (c)(2)) (count 5).<sup>6</sup> As to all counts, it was further alleged the offenses were committed for the benefit of, at the direction of, or in association with a criminal street gang with the specific intent to promote, further, or assist in the gang's criminal conduct (§ 186.22, subd. (b)). As to counts 1, 4 and 5, it was alleged Aguilar, Ruiz and Romero personally inflicted great bodily injury (Pen. Code, § 12022.7, subd. (a)).

In addition, it was alleged: Aguilar and Gallegos each had a felony conviction for which he served a prison term (§ 667.5, subd. (b)); Romero and Renteria each had two

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<sup>4</sup> A CD-ROM containing two video files—30 minutes of video footage from the east camera view and 30 minutes of video from the west camera view in Dorm 325, beginning about 15 minutes before and ending about 15 minutes after the attack on Perez, was played for the jury (and available to the jury in their deliberations). (People's Ex. 51.)

<sup>5</sup> Detective Salazar prepared photo six-packs with each defendant's picture as one of the six in each six-pack he later showed Hernandez.

<sup>6</sup> Hernandez was originally a co-defendant but later agreed to testify truthfully at trial in exchange for a 23-year sentence, segregation from the general population and the opportunity to marry.

prior felony convictions for which they had served prison terms (§ 667.5, subd. (b)); Aguilar had a serious or violent felony conviction (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)); and Renteria had a serious or violent felony conviction (§§ 667, subds. (a)(1), (b)-(i), 1170.12, subds. (a)-(d)).

At trial, the People presented evidence of the facts summarized above, in addition to the following: Hernandez testified that, as of August 7, 2005, he had been in Dorm 325 for a couple of months. He knew all of the defendants from the dorm and had talked with all of them at least a couple of times in the preceding weeks.<sup>7</sup> Gallegos and he were in the same tier of bunks. Aguilar, Renteria and he played cards together a couple of times. Renteria was a “rep,” meaning “somebody that’s in charge of [the] dorm[, t]he one you come up to to speak if there is a problem or something.” Hernandez knew Perez, Aguilar and Romero were members of Florencia 13.

A few minutes before the attack on Perez, Renteria approached Hernandez and told him “something was going to go down.” When Hernandez asked what he meant, Renteria said, “Boxer” (Perez) “ratted on one of his homeboys.” Renteria told Hernandez his job was to “clean up all the blood and uniforms, all the stuff and sheets and everything that was covered with blood.”<sup>8</sup> In preparation, Hernandez got some rubber gloves in case Perez “had a disease or anything” and had a sheath in his pocket.

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<sup>7</sup> Hernandez did not know the defendants by their real names; he knew Renteria as “Chatto,” Aguilar as “Wicked,” Ruiz as “Maniac,” Romero as “Druggie,” and Gallegos as “Crook.”

<sup>8</sup> When Renteria first told Hernandez that his job would be to clean up, Hernandez said, he told Renteria, “No, I don’t want to do it.” Renteria did not seem angry; he just seemed “puzzled,” like, “What do you mean?” He didn’t threaten Hernandez in any way, and Hernandez did not feel he was “in immediate fear of death right there.” In his experience, Hernandez said, he believed something similar to what happened to Perez would happen to him in the future if he refused. Hernandez was an 18<sup>th</sup> Street gang member; although Florencia 13 is a rival on the street, Hernandez said it was different in jail.

Just before the attack (beginning at about 8:46 p.m. on the surveillance footage), in the west camera's view, Aguilar, Ruiz and Romero were standing near the back of the dorm and Aguilar gestured, calling Perez back to where they were. Perez complied. Perez was facing Aguilar who stood between two tiers of bunks. Ruiz was standing just behind Perez, and Romero was right behind Ruiz. Ruiz reached over Perez with something white resembling a trash can liner stretched taut between his hands and pulled back, pinning Perez's arms to his sides. Perez, who was small and slight, struggled to back away and kicked his legs as Ruiz lifted him off the ground. Aguilar pulled Perez back between the tiers of bunks while Romero also pushed Ruiz and Perez in behind the bunks.

Hernandez watched the attack from between two bunks in his and Gallegos's tier, about 36 feet away. He saw Ruiz holding Perez while Aguilar and Romero were "slicing [Perez]." Hernandez could not see anything in their hands, "just a lot of hands swinging around," "like . . . they were cutting" while Perez was trying to "dodg[e] the swings they were doing." In the surveillance video, Romero's head is still showing and there is movement indicating further struggle. Hernandez had never seen any of the surveillance video footage (or any of the still photos taken from the camera footage) until he testified at trial.

About two minutes later, Hernandez, carrying a sheet, walked back to see if the attack was over. He saw Perez sitting on the floor, holding his bleeding face with a towel.

Gallegos passed out clean uniforms and Hernandez and Gallegos cleaned up the bloody clothes, towels and sheets and put them in a laundry bag in the bathroom before Perez reported to the custody assistant.

Perez did not testify at the subsequent Nava trial. He was convicted of attempted murder, and his scars on his head, neck and ears were apparent at that time.

He attempted to "plead the Fifth" at the defendants' trial, was held in contempt and refused to testify. Perez was turned so the jury could see the scars on both sides and back of his head, face and neck.

Detective Richard Martinez, a gang investigator with the Los Angeles Sheriff's Department assigned to the Century Station gang unit, testified as a gang expert.<sup>9</sup> As a gang investigator, he gathered intelligence on the local gangs by speaking with gang members in both custodial and non-custodial situations and with members of the community and law enforcement. He handled cases in which targeted gang members were either a victim or a suspect in a crime.

After working on a task force targeting the Florencia 13 gang, Martinez had been assigned to deal solely with the Florencia 13 gang for the past few years.<sup>10</sup> Florencia 13 is the largest gang in Century Station's area, with around 2000 documented members.<sup>11</sup> It is one large umbrella gang with about 19 smaller groups called "cliques" that all claim Florencia 13. One of these cliques is known as Little Rascals, with between 30 and 50 members. Florencia 13 crimes included murder, robbery, rape, witness intimidation, narcotics trafficking, illegal firearm possession, home invasion robberies, burglaries and vehicle theft. Martinez testified to specific crimes committed by Florencia 13 which he had investigated.

Perez (the victim) had acknowledged his membership in Florencia 13; he also had a large "F13 Raskals" tattoo on his chest, acknowledging both Florencia 13 and the Little Rascals clique within that gang; the shooting involving Nava and Perez occurred within Little Rascals territory. Aguilar, like Perez, was an admitted Florencia 13 member and a member of the Little Rascals clique. Aguilar had "Florence" tattooed across his shoulder

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<sup>9</sup> Martinez had talked with gang members on a daily basis while assigned to the Los Angeles County jail and arrested hundreds of gang members while assigned to patrol. When he was assigned to the gang unit, he received 40 hours of training at the Los Angeles Sheriff's Department's gang investigator school plus another week of training in conducting gang investigations.

<sup>10</sup> Florencia 13 is also known as Florence 13, Florencia and Florence.

<sup>11</sup> Florencia 13 claims a 12-square mile territory in the Lynwood area of Los Angeles County, including the Florence or Firestone portion of unincorporated Los Angeles County and a portion of Huntington Park.

blades; he also had “LRS” (for Little Rascals) tattooed on his elbow and a “Lil Raskals” tattoo on his back.

Martinez, who had nine years of experience as a gang investigator as well as experience working in a custodial setting, testified that individuals who were not known Florencia 13 gang members would assist Florencia 13 gang members in committing their crimes either to try to get into the gang or to curry favor with the gang. In a custodial setting, he had seen individuals who were not members of a particular gang assist members of the gang to gain the gang’s favor because doing so would help the non-member’s own safety and well-being in custody.<sup>12</sup>

In his defense, Aguilar presented testimony that, in addition to the west and east camera locations, there was a camera pointed toward a telephone area and another pointed toward an outer screen separating the dorm and the staff station for the officer supervising the dorm. From this view, you could not identify people entering because of the thickness of the wire mesh screen. A man seen in the video footage wearing a white T-shirt with “his head ducked down” and carrying something white was not identified or charged.

Renteria, Ruiz, Romero and Gallegos presented no evidence.

The jury found Aguilar and Romero guilty on all four counts and found true the gang and personal infliction of great bodily injury allegations. Ruiz was convicted of conspiracy to commit aggravated mayhem (count 1), with true findings on the gang and personal infliction of great bodily injury allegations; and aggravated mayhem (count 3), with a true finding on the gang allegations. Renteria and Gallegos were convicted of the

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<sup>12</sup> Martinez had been called in to assist in the Perez-Nava shooting investigation. Aguilar had been “nearby during the [Perez/Nava] shooting” and “in charge.” Aguilar was arrested and charged with a separate crime after drugs and firearms were recovered in a search of his residence. According to the record, it was Perez who told investigating officers of Aguilar’s presence at the shooting, but Aguilar was not charged with that crime. There is no indication Bravo said anything about Perez’s statement about Aguilar in court.



lesser included offense of conspiracy to commit mayhem (count 1), with the gang allegation found true; and aggravated mayhem (count 3), with the gang allegation found true.<sup>13</sup>

The trial court sentenced Aguilar to state prison for a term of life with a minimum term of 15 years (§ 186.22, subd. (b)(5)) on count 3 (aggravated mayhem). On counts 1, 4 and 5, pursuant to section 654, the court imposed and stayed life terms, with an additional (consecutive) three years on each count (§ 12022.7, subd. (a)(1)).<sup>14</sup>

Romero (like Aguilar who received the same jury verdicts and findings) was sentenced to state prison for a term of life with a minimum term of 15 years (§ 186.22, subd. (b)(5)) on count 3 (aggravated mayhem). On counts 1, 4 and 5, pursuant to section 654, the court imposed and stayed life terms, with an additional (consecutive) three years on each count (§ 12022.7, subd. (a)(1)).<sup>15</sup>

Ruiz was sentenced to state prison for a term of life with a minimum term of 15 years (§ 186.22, subd. (b)(5)) on count 3 (aggravated mayhem). On count 1, pursuant to section 654, the court imposed and stayed a life term, with an additional (consecutive) three years (§ 12022.7, subd. (a)(1)).

Renteria admitted the allegations relating to his prior convictions. The trial court then sentenced him to state prison for a term of life with a minimum term of 30 years plus 7 years, calculated as follows: life with a minimum term of 15 years (§ 186.22, subd. (b)(5), doubled pursuant to sections 1170.12, subdivisions (a) through (d), and 667, subdivisions (b) through (i)), on count 3 (aggravated mayhem), plus a consecutive 5-year sentence (§ 667, subd. (a)(1)), plus 2 consecutive 1-year sentences for each prior

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<sup>13</sup> Ruiz, Renteria and Gallegos were acquitted on counts 4 and 5 (dissuading a witness by force or threat and dissuading a witness in furtherance of a conspiracy, respectively).

<sup>14</sup> The People chose not to proceed on Aguilar's prior conviction allegations.

<sup>15</sup> The People chose not to proceed on Romero's prior conviction allegations.

(§ 667.5, subd. (b)). On count 1 (the lesser included offense of conspiracy to commit mayhem), pursuant to section 654, the court imposed and stayed a 14-year sentence (the midterm of 4 years plus 10 years on the gang allegation).

Gallegos was sentenced to state prison for a term of life with a minimum term of 15 years (§ 186.22, subd. (b)(5)) on count 3 (aggravated mayhem). On count 1 (the lesser included offense of conspiracy to commit mayhem), pursuant to section 654, the court imposed and stayed a 14-year sentence (the midterm of 4 years plus 10 years on the gang allegation).<sup>16</sup>

Aguilar, Romero, Ruiz, Renteria and Gallegos appeal.

## ***DISCUSSION***<sup>17</sup>

### **Aguilar's Appeal**

According to Aguilar, he should receive a new trial because gang-related evidence corrupted his trial in two ways.<sup>18</sup> First, he says, the trial court abused its discretion in

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<sup>16</sup> The People chose not to proceed on Gallegos's prior conviction allegations.

<sup>17</sup> In addition to the arguments raised in each of their own briefs, Romero, Aguilar, Gallegos and Renteria all join in the briefs of all other appellants (Cal. Rules of Court, rule 8.200(a)(5)); Ruiz, in support of his own arguments there was no substantial evidence of aggravated mayhem, joins in Gallegos's argument there was insufficient evidence to support a finding Perez's injuries were permanent (§ 205).

<sup>18</sup> In his opening brief, Aguilar mischaracterizes Detective Salazar's testimony, saying Salazar viewed the videos as many as 30 times and even he *couldn't identify anyone because everyone looked the same*; the "testimony identifying the [d]efendants as the perpetrators of the crime came from Hernandez, the only inmate to testify." In fact, the record does not support this assertion. While Detective Salazar did testify to viewing the videos as many as 30 or more times, the cited testimony does not support the remainder of Aguilar's assertion. Rather, Aguilar cites to testimony confirming that there were other men with shaved heads, "brown skin of varying shades," tattoos—some with builds similar to the defendants. However, Detective Salazar specifically testified that Aguilar and the other defendants were "identif[ied] as . . . individuals involved in the

refusing to bifurcate trial as to the gang allegations. Second, he says, the trial court abused its discretion by failing to exclude the testimony of Detective Martinez. We reject both contentions.

**Aguilar Has Failed to Demonstrate Prejudicial Error in the Trial Court’s Denial of His Request to Bifurcate Trial of the Gang Allegations.**

According to Aguilar, “The only evidence to support the ‘punish the snitch’ motive was the fact of . . . Aguilar’s gang affiliation.” He says Detective Martinez, the prosecution gang expert, “created a gang-related motive out of whole cloth,” and the prosecution “transformed a trial that should have asked the jury to assess the credibility of a witness and to interpret a videotape into a trial that asked the jury to lock up . . . Aguilar before he hurt someone else.” “Admittedly,” Aguilar says, “the percipient witnesses were able to connect the people to a gang and the people to the crime. But only a hypothesis connected the gang to the crime. The prosecution used this hypothesis as the basis for presenting the jury with evidence that . . . Aguilar belongs to a dangerous gang even though this evidence had no relationship to any theory of the crimes with which . . . Aguilar was charged.” Citing our decision in *People v. Albarran* (2007) 149 Cal.App.4th 214, Aguilar claims the trial court denied his request to bifurcate the gang allegations “too casually.”<sup>19</sup> We disagree.

In *People v. Albarran*, *supra*, 149 Cal.App.4th 214, 232, presented with very different facts (and procedural posture), we noted: “This case presents one of those rare and unusual occasions where the admission of evidence has violated due process and

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incident” by looking at the video and comparing this evidence with photos taken within days of the attack on Perez as well as booking photos of the inmates in dorm 325 in consultation with the gang operations jail deputies assigned to that location.

<sup>19</sup> Gallegos makes a similar argument, and it is similarly deficient.

rendered the defendant's trial fundamentally unfair." "[A]s a general rule, evidence of gang membership and activity is admissible if it is logically relevant to some material issue in the case, other than character evidence, is not more prejudicial than probative and is not cumulative. [Citation.] Consequently, gang evidence may be relevant to establish the defendant's motive, intent or some fact concerning the charged offenses other than criminal propensity as long as the probative value of the evidence outweighs its prejudicial effect." (*Id.* at p. 223.)

Here, the gang-related evidence was relevant to the defendants' motive and intent in connection with the charges against them, to make sense of why Perez's face was sliced up in this vicious attack, why Perez said he cut himself, why he did not testify at the Nava trial and why he refused to testify at this trial and had to be held up for the jurors to see his injuries, why the others participated and why the defendants had the roles they did. The record reflects the court's exercise of its discretion. (*People v. Albarran, supra*, 149 Cal.App.4th at pp. 224-225 ["the decision on whether evidence, including gang evidence, is relevant, not unduly prejudicial and thus admissible, rests within the discretion of the trial court"].)

Moreover, "[a]ny evidence admitted solely to prove the gang enhancement was not so minimally probative on the charged offense, and so inflammatory in comparison, that it threatened to sway the jury to convict regardless of defendants' actual guilt. Accordingly, defendants did not meet their burden 'to clearly establish that there is a substantial danger of prejudice requiring that the charges be separately tried.' [Citation.] The court acted within its discretion in denying bifurcation." (*People v. Hernandez* (2004) 33 Cal.4th 1040, 1051.)

### **Aguilar Has Failed to Demonstrate Prejudicial Error in the Trial Court's Admission of Detective Martinez's Testimony.**

To the extent Aguilar now raises his various objections to Detective Martinez's testimony—that it was too simplistic, too abstract, too broad, and not based on the testimony of a percipient witness—without having first raised them in the trial court, he

has waived these claims of error. (*People v. Gonzalez* (2006) 38 Cal.4th 932, 948-949.) Moreover, for the reasons already addressed in the preceding section, there was overwhelming evidence these crimes were gang-related, and Aguilar has failed to demonstrate an abuse of discretion in the trial court's admission of this evidence or prejudicial error in any event. (*Ibid.*)

### **Romero's Appeal**

#### **Substantial Evidence Supports Romero's Convictions for Dissuasion of a Witness by Force (Count 4) and Dissuasion of a Witness in Furtherance of a Conspiracy (Count 5).**

According to Romero, because he belonged to Florencia 13, but not the Little Rascals clique, it was Aguilar and Aguilar alone who had a personal ax to grind with Perez and therefore a motive for committing this assault to dissuade Perez from testifying, raising the inference it was Aguilar who would know, if anyone knew, when the Nava/Perez trial would be. There was no evidence Romero knew Perez and no evidence Romero and Aguilar "hung out together" on the streets or in Dorm 325. It follows, he says, the circumstantial evidence supported but one agreement to commit aggravated mayhem and there was no evidence to reasonably support an agreement or specific intent on Romero's part to dissuade Perez from testifying so his convictions on counts 4 and 5 must be reversed. We disagree.

Detective Martinez testified that, even if Romero was not a member of the Little Rascals clique, as a member of Florencia 13, "he's going to be expected, given the circumstances, to make himself available[,] for him to carry out part of the attack on the snitch and would be expected to do so." Detective Martinez testified the attack demonstrated Florencia 13 would not tolerate what Perez had done. The very nature of the attack itself and the two Florencia 13 gang members' specific role in that attack support the inference of a second conspiracy between the two to silence Perez (as, in fact, they did). (See *People v. Remiro* (1979) 89 Cal.App.3d 809, 843.)

According to the record, gang members were in the audience at the time of Detective Bravo's preliminary hearing testimony regarding the Nava-Perez shooting three weeks before. Hernandez, a member of a different gang, had even been told by Renteria that Perez had "ratted" out one of his "homeboys." A rational juror could conclude from the evidence presented that, in slashing Perez's face, Romero's and Aguilar's intent was not only to punish him for what he had done, but to prevent him from assisting any further in the Nava prosecution still underway.<sup>20</sup> (*People v. Mendoza* (1997) 59 Cal.App.4th 1333, 1341-1345.)

**Substantial Evidence Supports Romero's Convictions for Both Conspiracy to Commit Aggravated Mayhem (Count 1) and Dissuasion of a Witness in Furtherance of a Conspiracy (Count 5).**

Alternatively, Romero says, his conviction on count 5 (dissuasion of a witness in furtherance of a conspiracy) must be reversed as the evidence supported the existence of only one conspiracy—conspiracy to commit aggravated mayhem (count 1); "any purported conspiracy to dissuade Perez was nothing more than a subagreement within the overall agreement to assault him thereby supporting only a single conspiracy." We disagree.

For the reasons addressed in the Attorney General's brief, the evidence supports existence of two overlapping conspiracies (as the jury, in fact, found) such that all five defendants entered into a conspiracy to commit mayhem while Aguilar and Romero, as fellow Florencia 13 gang members, formed their own "side agreement" to prevent Perez from finishing what he started in assisting the prosecution in the Nava shooting. Romero has failed to demonstrate prejudicial error. (See *People v. Hardeman* (1966) 244

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<sup>20</sup> Aguilar was the only other defendant convicted on these two counts. He has joined all other defendants' arguments to the extent they inure to his benefit. As noted in the text, however, Romero essentially argues substantial evidence supports Aguilar's conviction on count 4 (dissuasion of a witness through force) and substantial evidence supports Aguilar's conviction on count 5 (dissuasion of a witness in furtherance of a conspiracy) for the same reasons we find this count supported as to Romero.

Cal.App.2d 1, 45-46, citation omitted [“Defendant contends that there was only one general conspiracy, if any . . . . The two conspiracies being separate offenses, and involving separate, even though in part overlapping objectives, there was no error in instructing the jury to consider each count separately”].)

**Romero Has Failed to Demonstrate Prejudicial Error in the Trial Court’s Failure to Instruct the Jury Sua Sponte It Must Determine Whether There Was a Single Conspiracy or Multiple Conspiracies or That His Trial Counsel Was Ineffective in Failing to Object in This Regard.**

Romero complains “the problem here . . . is that the jury was not instructed to decide whether this was just one overall conspiracy [as he contended in his preceding argument], or dual conspiracies occurred. The resultant omission allowed [Romero] to be convicted of two conspiracies based on exactly the same conduct.” Again, we disagree.

First, as Romero acknowledges he failed to object in the trial court; as a result, he has forfeited this claim of error. Further, the record implicitly establishes the fact the jury in fact found two separate conspiracies in light of Aguilar’s and Romero’s convictions (but Ruiz’s, Renteria’s and Gallegos’s acquittals) on count 5 (dissuasion of a witness in furtherance of a conspiracy) and guilty verdicts for all defendants on count 1. Romero cannot establish prejudice in any event.

**Substantial Evidence Supports the Great Bodily Injury Finding as to Romero.**

We reject Romero’s claim the evidence was insufficient to support the jury’s true finding on the great bodily injury allegations against him. The video supports Hernandez’s testimony that during the struggle behind the bunks, Romero, along with Aguilar, was “slicing” Perez’s face. In any case, the jury was instructed as follows: “When a person participates in a group beating and it is not possible to determine which assailant inflicted a particular injury, he or she may be found to have personally inflicted great bodily injury upon the victim if (1) the application of unlawful physical force upon

the victim was of such a nature that, by itself, it could have caused the great bodily injury suffered by the victim; or (2) *at the time the defendant personally applied unlawful physical force to the victim, the defendant knew that other persons, as part of the same incident, had applied, were applying, or would apply unlawful physical force upon the victim and the defendant then knew, or reasonably should have known, that the cumulative effect of all the unlawful physical force would result in great bodily injury to the victim.*” (CALJIC No. 17.20, italics added.)

Because it is clear from the camera footage that Romero applied physical force in pushing Perez in toward Aguilar and helped to keep him there behind the bunks while his face was slashed, Romero’s challenge to the sufficiency of the evidence in support of the jury’s true finding he personally inflicted great bodily injury is meritless. (*People v. Modiri* (2006) 39 Cal.4th 481, 495-496.)

**Romero Was Properly Sentenced on Counts 1, 3 and 5; His Abstract of Judgment Should Be Corrected to Accurately Reflect His Stayed Sentence on Count 5 as well as the Stayed Great Bodily Injury Enhancements on Counts 1, 4 and 5.**

In his opening brief, as to counts 1, 3 and 5, Romero argued his sentence was unauthorized, incorrectly asserting none of these offenses warranted an extended parole eligibility date, but he subsequently conceded this argument (in an Errata Letter filed December 24, 2007, and in his reply brief). As noted in the Attorney General’s brief, Romero’s abstract of judgment should be corrected to accurately reflect his sentence on count 5—a (stayed) life term with a minimum parole period of 7 years. (§§ 136.1, subd. (c)(2); 186.22, subd. (b)(4)(C).) In addition, as to counts 1, 4 and 5, the trial court imposed and stayed sentence—including the three-year enhancements under section 12022.7 as to each count. However, the abstract of judgment includes a “3” in the “Time Imposed or ‘S’ for Stay” box. Accordingly, as Romero argues and the Attorney General agrees, the abstract of judgment is properly corrected in these respects. (*People v. Scott* (1994) 9 Cal.4th 331, 354; § 1260.)



## **Ruiz's Appeal**

### **The True Finding on the Great Bodily Injury Allegation Relating to Count 1 (Conspiracy to Commit Aggravated Mayhem) Does Not Constitute Reversible Error.**

Ruiz says the great bodily injury enhancement as to count 1 (conspiracy to commit aggravated mayhem) requires reversal for three reasons: (1) “nobody was injured during the commission of the crime of conspiracy;” (2) as great bodily injury is an element of aggravated mayhem, subdivision (g) of section 12022.7 prohibits a true finding on this enhancement; and (3) the evidence was insufficient to support a true finding that Ruiz personally inflicted great bodily injury on Perez. We disagree.

First, Ruiz cites no authority in support of his first contention that a great bodily injury allegation may not be found in connection with a conspiracy count (see *People v. Becker* (2000) 83 Cal.App.4th 294, 297-298 [conspiracy itself is a continuing offense lasting until the final overt act is complete], and Perez *was* injured during the commission of count 1. Second, while a great bodily injury enhancement would not be proper in connection with the aggravated mayhem count (count 3) under section 12022.7, subdivision (g), notwithstanding the apparent anomaly, this provision presents no bar with respect to count 1 as great bodily injury is not an element of count 1 (conspiracy to commit aggravated mayhem). Finally, for the same reasons we rejected Romero's contention the evidence was insufficient to support a great bodily injury finding, we reject Ruiz's challenge to the sufficiency of the evidence as well. (*People v. Modiri*, *supra*, 39 Cal.4th at pp. 495-496.)

### **Substantial Evidence Supports Ruiz's Conviction of Conspiracy to Commit Aggravated Mayhem (Count 3).**

In Ruiz's view, the evidence is sufficient to show he entered into a conspiracy to attack Perez, but insufficient to show he conspired to commit aggravated mayhem. We

disagree. According to the record, Ruiz pinned Perez's arms to his side while Aguilar and Romero "sliced" Perez's face. Further, so much blood was anticipated that three others were prepared to and available to clean up after the attack. The evidence was sufficient to support this conviction. (*People v. Szadziejewicz* (2008) 161 Cal.App.4th 823, 831-832.)

### **Substantial Evidence Supports Ruiz's Conviction of Aggravated Mayhem (Count 3).**

In addition to Gallegos's challenge to the sufficiency of the evidence on count 3, Ruiz says the passage of nearly three years from the July 2004 preliminary hearing in which Detective Bravo testified and Perez's appearance in court at the defendants' trial was "too long a time period for a jury to be allowed to make a leap concerning how the injury was sustained." Ruiz ignores the evidence. According to the record, the attack took place just short of three weeks after the July 2005 preliminary hearing in the Perez-Nava shooting. Detective Bravo testified Perez had no injuries to his face, head, neck or ears at that time. However, Hernandez testified he saw Perez immediately after the attack, holding his bloody face with a towel, and described Perez as disfigured as a result of the attack. The custody assistant similarly described the injuries to Perez's face when he approached the security gate minutes after the attack. The jury saw photographs taken at that time and saw Perez in person at the time of trial. This contention is meritless.

### **Substantial Evidence Supports the Finding Florencia 13 Is a Criminal Street Gang in Support of the Gang Enhancements.**

We reject Ruiz's contention the evidence was insufficient to establish Florencia 13 is a criminal street gang within the meaning of section 186.22, subdivision (f). (*People v. Ramirez* (2007) 153 Cal.App.4th 1422, 1427; *People v. Duran* (2002) 97 Cal.App.4th 1448, 1464-1465.)

## **Gallegos's Appeal**

### **The Trial Court Did Not Err in Refusing to Bifurcate Trial of the Gang Allegations.**

For the reasons addressed in connection with Aguilar's appeal in this regard, Gallegos has failed to demonstrate prejudicial error in the court's exercise of discretion declining to bifurcate trial of the gang allegations.

### **Substantial Evidence Supports Gallegos's Convictions for Conspiring to Commit Mayhem (Count 1) and Aggravated Mayhem (Count 3).**

Gallegos says he only "helped clean up and pass out '[C]ounty blues" so there is no substantial evidence he conspired to commit mayhem or aided and abetted the commission of aggravated mayhem. We disagree.

His assertions there is no evidence he knew anything was going to happen before handing out the clean uniforms and helping to clean up fall flat after watching the video surveillance footage. Considerable circumstantial evidence supports both of these convictions in light of Gallegos's focus (with Hernandez near their bunks) on the area of the attack, repeatedly checking and walking back and forth. In fact, the video supports the conclusion Gallegos, like Hernandez, was well aware of what was going to happen and not only helped clean up but also prepared for his role. Just *before* the attack began, Gallegos walked around to the other side of the bunk area where Aguilar, Ruiz and Romero had Perez. He appears to be getting the uniforms ready to distribute and is standing ready to immediately hand them out at the appropriate time. (*People v. Hill* (1998) 17 Cal.4th 800, 850 ["That the evidence could be consistent with other scenarios is irrelevant . . . so long as there was substantial evidence from which a rational trier of fact could have found [as it did]."])

Gallegos also argues there is insufficient evidence Perez's injuries were caused by this attack. We summarily reject this argument for the same reasons we rejected Ruiz's

claim in this regard. Further, Gallegos’s contention that there was no expert testimony and therefore no evidence Perez’s injuries were permanent is meritless in light of the testimony regarding the “slicing” motions resulting and the severity of Perez’s “disfiguring” injuries as well as the fact the injuries were evident nearly two years later at the defendants’ trial. A jury may infer the permanence of a scar. (*People v. Keenan* (1991) 227 Cal.App.3d 26, 36, fn. 6.)

**We Reject Gallegos’s Claim the Trial Court Committed Prejudicial Error in Instructing the Jury with CALJIC No. 3.16 (Accomplice as a Matter of Law).**

Without objection, the jurors were instructed: “If the crimes charged were committed by anyone, the witness Manuel Hernandez was an accomplice as a matter of law *and his testimony is subject to the rule requiring corroboration.*” (Italics added.) As a result, Gallegos says, “[b]ecause the jury was essentially told that [Gallegos] was the guilty Hernandez’s accomplice, it was instructed that [Gallegos] was guilty.” We disagree.

Preliminarily, Gallegos forfeited his claim of error by failing to object to this instruction at trial. (*People v. Panah* (2005) 35 Cal.4th 395, 436.) In addition, the instruction was properly given; the trial court had a sua sponte duty to give it. (*People v. Robinson* (1964) 61 Cal.2d 373, 396, footnote omitted [“court’s error in authorizing the jury to find [the defendant] may not have been an accomplice denied the codefendants the protection intended by . . . section 1111”].) Gallegos ignores the fact that, because of this instruction, jurors were instructed to view any incriminating testimony from Hernandez with caution (CALJIC No. 3.18), and that no defendant could be found guilty based on Hernandez’s testimony unless that testimony was corroborated by other evidence tending to connect that defendant with the commission of the offense (CALJIC No. 3.11). The jury was also instructed with the definition of an accomplice and the requirements for the

sufficiency of the evidence corroborating the testimony of an accomplice.<sup>21</sup> (CALJIC Nos. 3.10 and 3.21.) Moreover, the surveillance video demonstrated Gallegos’s participation in these crimes, including “getting into position” in preparation to distribute fresh uniforms and to get rid of the bloodied ones as the attackers stripped them off and cleaning and getting rid of the evidence of the attack. Gallegos cannot establish prejudice in any event.

### **Renteria’s Appeal**

#### **Renteria Has Failed to Demonstrate Prejudicial Error in the Trial Court’s Refusal to Instruct the Jury on the Defense of Duress.**

The trial court concluded there was no substantial evidence to support a duress instruction under section 26, and we agree. First, although there was testimony Hernandez thought he might face a beating or attack like Perez suffered if he refused, the evidence was insufficient to establish any of the defendants was in immediate fear for his life if he did not cooperate. Moreover, the video of the dorm activity preceding, during and after the attack refutes any suggestion Renteria, the “rep” who approached Hernandez regarding his participation, was operating under duress. To the contrary, the video shows Renteria moving about the dorm with an air of authority, talking to many people, directing them to clear out of the back of the dorm at the appropriate time, and apparently supervising and directing the entire operation. Standing with his arms folded across his chest and watching Gallegos work, he appears to be very relaxed and in command—not under duress.<sup>22</sup> None of these defendants identifies any substantial

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<sup>21</sup> *United States v. Gaudin* (1995) 515 U.S. 506 does not support Gallegos’s claim as, in that case, the jury was instructed to find an *element* proven as a matter of law when the prosecution was required to prove that element.

<sup>22</sup> Similarly, Romero appears to be smiling or laughing as he walks away from the attack on Perez.

evidence any one of them was acting under duress; moreover, none can establish prejudice in the absence of such an instruction.

It follows that Renteria's claim of cumulative error must fail as well.<sup>23</sup>

### ***DISPOSITION***

The judgments are affirmed in all respects, except that Romero's abstract of judgment is to be corrected to accurately reflect his sentence on count 5—a stayed life term with a minimum parole period of 7 years, and further specifying the 3-year great bodily injury enhancements on counts 1, 4 and 5 were stayed; and Renteria's abstract of judgment is to be corrected to reflect the imposition of an additional two years under section 667.5, subdivision (b).

**WOODS, J.**

**We concur:**

**PERLUSS, P. J.**

**ZELON, J.**

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<sup>23</sup> The Attorney General notes that Renteria's abstract of judgment indicates one additional year was imposed pursuant to section 667.5, subdivision (b), but the reporter's transcript reflects the trial court's imposition of "an additional and consecutive one year in state prison for each of the priors, for an additional two years in prison." The abstract of judgment should be corrected to reflect the sentence imposed. (*People v. Scott, supra*, 9 Cal.4th at p. 354.)